

Lake View Trust and Savings Bank
3201 North Ashland Avenue
Chicago, Illinois 60657

Interstate Commerce Commission
Washington, D. C.

RECORDATION NO. 8802 2 119A046
Filed & Recorded APR 29 1977

APR 29 1977 - 10 55 AM

Gentlemen:

INTERSTATE COMMERCE COMMISSION

Enclosed for recordation under the provisions of Section 20 (c) of the Interstate Commerce Act, as amended, are the original and counterparts of a Reconstruction and Conditional Sale Agreement dated as of April 1, 1977.

A general description of the railroad rolling stock covered by the enclosed document is set forth in Schedule I attached to this letter and made a part hereof.

The names and addresses of the parties are:

Bank: Lake View Trust and Savings Bank
3201 North Ashland Avenue
Chicago, Illinois 60657

Railroad: Burlington Northern Inc.
Burlington Northern Building
176 East Fifth Street
St. Paul, Minnesota 55101

The undersigned is the Bank mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original Equipment Lease to Michael J. Leech, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

LAKE VIEW TRUST AND SAVINGS BANK

By

Its Authorized Officer

BANK AS AFORESAID

Enclosures

RECEIVED
APR 29 10 54 AM '77
I.C.C.
FEE OPERATION 3R.

Chapman and Cutler

SCHEDULE I

Railroad Rolling Stock to be conditionally sold under Reconstruction and Conditional Sale Agreement dated as of April 1, 1977, between Lake View Trust and Savings Bank, (the "Bank") and Burlington Northern, Inc., (the "Railroad"):

| <u>Quantity</u> | <u>Item</u> |
|-----------------|---|
| 60 | 50-Foot Double Door Boxcars Bearing Car Numbers BN 248200 through BN 248259, both inclusive. |

Interstate Commerce Commission

Washington, D.C. 20423

4/29/77

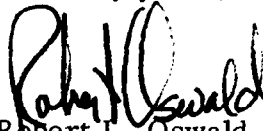
OFFICE OF THE SECRETARY

**Michael J. Leach
Chapman & Cutler
111 West Monroe Street
Chicago, Illinois 60603**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **4/29/77** at **10:55am**
and assigned recordation number(s) **8802**

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

RECORDATION NO. 8802 Filed & Recorded

APR 29 1977 - 10 55 AM

~~INTERSTATE COMMERCE COMMISSION~~

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT

Dated as of April 1, 1977

Between

BURLINGTON NORTHERN INC.

and

LAKE VIEW TRUST AND SAVINGS BANK, as Agent

Re:

\$1,548,981 Maximum Principal Amount
Conditional Sale Indebtedness
(8-1/4% due 1978-1992)

of

BURLINGTON NORTHERN INC.

(60 50-Foot Double Door Boxcars)

(Burlington Northern No. 77-10)

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Attachment to Reconstruction and Conditional Sale Agreement:

Schedule A - Description of Equipment

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT, dated as of April 1, 1977, between BURLINGTON NORTHERN INC. (the "Railroad"), and LAKE VIEW TRUST AND SAVINGS BANK, acting as Agent under a Finance Agreement dated as of April 1, 1977 (the "Finance Agreement" and said Bank, so acting, being hereinafter called the "Bank").

WHEREAS, the Railroad owns 60 50' boxcars (the "Hulks") and has agreed with the Bank that it will, from time to time following the execution and delivery of this Reconstruction and Conditional Sale Agreement, transfer its right, title and interest in and to each such Hulk prior to completion of reconstruction thereof to the Bank and thereupon cause such Hulk to be reconstructed for the account of the Bank; and

WHEREAS, the Bank has agreed to accept conveyance of the right, title and interest of the Railroad in each such Hulk, to the reconstruction of such Hulk for its account by the Railroad, to the payment to the Railroad following such reconstruction on the Closing Date hereinafter provided for of the price of such Hulk and the reconstruction cost thereof and to the conditional sale thereof by the Bank to the Railroad pursuant to the terms and provisions hereof (said Hulks as reconstructed being described in Schedule A hereto and hereinafter called collectively the "Equipment" and individually "Item of Equipment" or "Item");

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

SECTION 1. HULK CONVEYANCE, RECONSTRUCTION AND SALE.

From and after the execution and delivery hereof, the Railroad will convey all of its right, title and interest in and to each Hulk prior to completion of reconstruction thereof. Such conveyance shall be evidenced by execution and delivery by the Railroad of a Warranty Bill of Sale to the Bank transferring title to the Hulk described therein and warranting to the Bank that at the time of such transfer the Railroad had legal title thereto and good and lawful right to convey the same and that such Hulk is free of all claims, liens and encumbrances of any nature, except only the rights of the Railroad under this Agreement. Pursuant to this Agreement, the Railroad will promptly thereafter cause the Hulks to be reconstructed into the Equipment for the account of the Bank at its plant as set forth in Schedule A hereto, and will sell and deliver to the Bank, and the Bank will

purchase from the Railroad and accept delivery of and pay for (as hereinafter provided) the Equipment, each Item of which shall be reconstructed in accordance with the specifications therefor referred to in said Schedule and in accordance with such modifications thereof as may be agreed upon in writing between the Railroad and the Bank (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each Item of Equipment shall conform to all Department of Transportation requirements and specifications for reconstructed equipment, and to all standards recommended by the Association of American Railroads, interpreted as being applicable to railroad equipment of the character of such Items as of the date of this Agreement, and each Item of Equipment (except replacement items referred to in Section 7 hereof) will be newly reconstructed railroad equipment having a useful life in excess of 15 years following the delivery date thereof pursuant to Section 2.5 hereof.

SECTION 2. DELIVERY.

2.1. The Railroad will deliver the various Items of Equipment to the Bank, freight charges, if any, prepaid, and, except as herein otherwise provided, in accordance with the delivery schedule set forth in Schedule A hereto.

2.2. The Railroad's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Railroad's reasonable control, including but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities or delays in receiving necessary materials, or delays of carriers or subcontractors.

2.3. Notwithstanding the preceding provisions, any Equipment not delivered, accepted and settled for on or before the outside delivery date provided therefor in Schedule A hereto shall be excluded herefrom and not included in the term "Equipment" as used in this Agreement.

2.4. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding paragraph, or pursuant to the provisions contained in Section 7.1 hereof, the Railroad and the Bank shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom, and the Bank shall thereupon convey to the Railroad all of its right, title and interest in any Item so excluded and will execute and deliver such instruments of transfer as the Railroad shall reasonably request evidencing such conveyance.

2.5. From time to time upon completion of reconstruction of a Hulk or Hulks into an Item or of a number of Items of Equipment by the Railroad, such Item or Items shall be presented to an inspector or other authorized representative of the Bank (who

shall be an officer or employee of the Railroad) for inspection and, if such Item or Items conform to the Specifications, such inspector or representative shall, acting for both the Bank as such authorized representative and for the Railroad, execute and deliver to the Bank and the Railroad, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such Item or Items have been inspected and accepted on behalf of the Bank and the Railroad and are marked in accordance with Section 6.1 hereof.

SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The base price per Item of Equipment, which includes both the price for purchase of the Hulk and for the cost of reconstructing such Hulk into an Item of Equipment, and which may include freight charges, if any, to place of delivery, but exclusive of interest and all other charges, is set forth in Schedule A hereto. The base price is subject to such increase as may be designated by the Railroad, and the term "Invoiced Price" as used herein shall mean the base price as so increased (if so increased); provided that the Invoiced Price for each Item of Equipment shall not exceed the maximum price provided therefor in Schedule A hereto. If on the Closing Date (as defined in Section 4 hereof) the Invoiced Price under this Agreement would, but for the provisions of this sentence, exceed the maximum price provided in Schedule A hereto, the Bank and the Railroad will enter into an agreement excluding from this Agreement such Item or Items of Equipment as will, after giving effect to such exclusion, reduce such Invoiced Price under this Agreement to not more than the maximum price provided in Schedule A hereto, and the Bank shall thereupon convey to the Railroad all of its right, title and interest in any Item so excluded and will execute and deliver such instruments of transfer as the Railroad shall reasonably request evidencing such conveyance.

3.2. For the purpose of making settlement for the Equipment, the Equipment shall be treated as one group of Items of Equipment (such group being hereinafter called a "Group").

3.3. The Bank, on the Closing Date with respect to the Group, shall pay to the Railroad the lesser of (i) the Invoiced Price of the Group or (ii) the maximum price of the Group provided in Schedule A hereto, provided that there shall have been delivered to the Bank and to Messrs. Chapman and Cutler on or before the Closing Date with respect to the Group, in such number of counterparts or copies as may reasonably be requested, the following documents, in form and substance satisfactory to the Bank and to Messrs. Chapman and Cutler:

(a) A Quitclaim Bill of Sale from the Railroad to the Bank, transferring to the Bank all right, title and interest of the Railroad, if any, to the Items of Equipment in the Group and warranting to the Bank that on the Closing Date such Items were free of all claims, liens and encumbrances of any nature arising by, through or under the Railroad, except only the rights of the Railroad under this Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the Items of Equipment in the Group as contemplated by Section 2 of this Agreement and further stating that there was plainly, distinctly, permanently and conspicuously marked on each side of each of such Items at the time of its acceptance, in letters not less than one inch in height, the following legend:

"Unit Subject to Security Interest of
Agent Bank under Conditional Sale
Agreement Recorded with I.C.C."

(c) An invoice for the Items of Equipment in the Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the Invoiced Price of such Items as set forth in said invoice and that such Invoiced Price does not exceed the fair value of such Items;

(d) An opinion of Messrs. Chapman and Cutler, who are acting as special counsel for the Bank and the Investors named in the Finance Agreement (the "Investors"), dated as of the Closing Date, addressed to the Investors, stating that (i) this Agreement, and assuming the due authorization, execution and delivery by the Investors referred to therein, the Finance Agreement have each been duly authorized, executed and delivered by the respective parties thereto and are valid and binding instruments enforceable in accordance with their respective terms, (ii) title to the Items of Equipment in the Group is validly vested in the Bank, free of all claims, liens and encumbrances except only the rights of the Railroad under this Agreement, (iii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this Agreement or if such approval is necessary, such approval has been obtained; (iv) this Agreement has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Bank in any State of the United States of America or in the District of Columbia; (v) the offering, sale and delivery of this Agreement, the conditional sale indebtedness payable hereunder and the Certificates of Interest issued pursuant to the Finance Agreement under the circumstances

contemplated by the Finance Agreement are exempt securities within the meaning of Section 3(a)(6) of the Securities Act of 1933, as amended and Section 304(a)(4)(A) of the Trust Indenture Act of 1939, as amended, and it is not necessary, in connection with the offering, sale and delivery of the Conditional Sale Agreement, the conditional sale indebtedness payable thereunder and the Certificates of Interest issued pursuant to the Finance Agreement to register any security under said Securities Act or to qualify any indenture under said Trust Indenture Act, and (vi) the opinion of counsel for the Railroad delivered pursuant to the following paragraph (e) is satisfactory in scope, form and substance to special counsel and in their opinion the Bank is justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Bank or the other parties to the Finance Agreement;

(e) A favorable opinion of counsel for the Railroad, dated as of the Closing Date, addressed to the Bank and the Investors, covering the matters referred to in clauses (ii), (iii) and (iv) of paragraph (d) above and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and is duly qualified to do business as a foreign corporation in all states where the character of its properties or the nature of its activities makes such qualification necessary; (ii) this Agreement and, assuming due authorization, execution and delivery by the investors referred to therein, the Finance Agreement have each been duly authorized, executed and delivered by the Railroad and are valid and binding instruments enforceable against the Railroad in accordance with their respective terms; (iii) the execution and delivery by the Railroad of this Agreement and the Finance Agreement do not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Railroad, or any indenture, agreement, or other instrument to which the Railroad is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice or lapse of time, or both) a default under, any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Railroad; and (iv) this Agreement has been duly deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision has been made for the publication of notice of such deposit in The Canada Gazette in accordance with said Section 86 and no other filing, recordation or deposit is necessary for the protection of the rights of the Bank in Canada or any Province thereof; and

(f) Certificate of Vice President of the Railroad, dated as of the Closing Date, to the effect that no Event of Default as specified in this Agreement or any event which with the lapse of time and/or notice provided for in this Agreement would constitute such an Event of Default, has occurred and is continuing, and to the effect that, since December 31, 1976, there has been no material adverse change in the affairs or financial condition of the Railroad.

In giving the opinions specified in paragraphs (d) and (e) above, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said paragraph (d), counsel may rely, as to the title to the Items of Equipment, on the opinion of counsel for the Railroad.

The obligation of the Bank hereunder to make payment for the Group is hereby expressly conditioned upon the prior receipt by the Bank, as provided in the Finance Agreement, of all the funds to be furnished to the Bank by the Investors which are parties to the Finance Agreement with respect to the Group.

It is understood and agreed that the Bank shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded herefrom pursuant to Section 2 or 3 hereof.

SECTION 4. CONDITIONAL SALE TO RAILROAD.

4.1. Upon completion of the purchase and sale by the Railroad to the Bank of the Group of Equipment pursuant to Sections 1, 2 and 3 of this Agreement, the Bank will sell and deliver to the Railroad, and the Railroad will purchase from the Bank and accept delivery of and pay for, the Group of Equipment as hereinafter provided. Delivery of the Group shall be made by the Bank to the Railroad at the point or points at which the Group shall have been delivered by the Railroad to the Bank pursuant to Section 2 of this Agreement. The purchase price (the "Purchase Price") of the Group payable by the Railroad to the Bank, as hereinafter provided, shall be the same aggregate amount (exclusive of any interest thereon payable as herein provided) as the Invoiced Price paid by the Bank pursuant to Section 3 of this Agreement and the method of payment of such Purchase Price by the Railroad to the Bank shall be as hereinafter provided.

4.2. The Railroad hereby acknowledges itself to be indebted to the Bank in the amount of, and hereby promises to pay in cash to the Bank at such place as the Bank may designate, an amount equal

to the Purchase Price of the Items of Equipment in the Group (hereinafter sometimes referred to as the "Conditional Sale Indebtedness") in installments as follows:

(a) on December 15, 1977 and on each June 15 and December 15 thereafter to and including June 15, 1992, an installment of interest accrued on the unpaid balance; and

(b) on each of the dates specified in clause (a) above, in addition to the installment of interest then payable, an installment equal to one-thirtieth (approximately 3.333%) of the original aggregate amount of the Conditional Sale Indebtedness.

4.3. The term "Closing Date" with respect to the Group shall mean September 15, 1977; provided that not less than 10 business days prior thereto the Railroad shall present to the Bank the invoice, or invoices, and the certificate or certificates of acceptance with respect to the Group, and the Railroad shall further have provided the Bank with written or telegraphic notice at least 7 business days prior to such Closing Date specifying the Closing Date and the aggregate Purchase Price of the Items of Equipment in the Group.

4.4. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays on which banks in the States of Illinois and Minnesota are authorized or required to close.

4.5. Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

4.6. The Railroad will pay interest at the rate of 9-1/4% per annum upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding. In the case of payments due pursuant to Section 4.2 hereof, the Railroad agrees to make all such payments to the Bank either by wire transfer on the due date thereof of immediately available funds or by delivery of a check on a date which will permit collection thereof by the Bank not later than the due date of such payment.

4.7. All payments provided for in this Agreement shall be made by the Railroad in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

4.8. Except as provided in Section 7 hereof, the Railroad shall not have the privilege of prepaying any installment of the indebtedness prior to the date it becomes due hereunder.

SECTION 5. TITLE TO THE EQUIPMENT.

5.1. After the sale by the Railroad to the Bank of the Group of Items of Equipment, the Bank shall and hereby does retain the full security title to and property in such Equipment until the Railroad shall have made all of the payments hereunder and shall have kept and preformed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. When and only when the Bank shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided and all the Railroad's other obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Bank, except that the Bank, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment releasing its security title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Section 21 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment, and will pay to the Railroad any money paid to the Bank, pursuant to Section 7 hereof and not therefore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale and to file such certificate within a reasonable time after written demand by the Railroad.

SECTION 6. MARKING OF EQUIPMENT.

6.1. The Railroad will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon both sides of each Item of Equipment in letters not less than one inch in height, the words "Unit subject

to Security Interest of Agent Bank under Conditional Sale Agreement recorded with the I.C.C.", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Bank to such Item of Equipment and its rights under this Agreement. The Railroad will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Railroad will not change the road number of any Item of Equipment except with the consent of the Bank and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with the Bank by the Railroad and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

6.2. Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Railroad to use the Equipment under this Agreement.

SECTION 7. CASUALTY OCCURRENCES; INSURANCE.

7.1. In the event that any Item of Equipment shall at any time on or after the Closing Date (as defined in Section 4 hereof) be or become lost, stolen, destroyed, or irreparably damaged, or shall be condemned or requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the original term of this Agreement, being hereinafter called a "Casualty Occurrence"), prior to the payment of the indebtedness in respect of the Purchase Price of such Item, together with interest thereon and all other payments required hereby, the Railroad shall, within ten days after it shall have been determined that such Item of Equipment has suffered a Casualty Occurrence, fully inform the Bank in regard thereto. When the total value of Items of Equipment which have suffered a Casualty Occurrence (exclusive of Items of Equipment having suffered a Casualty Occurrence with respect to which payments shall have been made to the Bank pursuant to this Section 7) shall exceed \$100,000 (or such lesser amount as the Railroad shall elect), the Railroad shall, within 30 days of such event, pay to the Bank a sum equal to the aggregate Casualty Payment (as defined in Section 7.3 hereof) of such Items of Equipment as of the date of such payment and shall file with the Bank a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad setting forth

the Casualty Payment of each Item of Equipment suffering a Casualty Occurrence. If any Item of Equipment shall, prior to the Closing Date, be subject to an occurrence which would have constituted a Casualty Occurrence had the same taken place on or after the Closing Date, then such Item shall thereupon be excluded from the provisions of this Agreement, which exclusion shall be evidenced as provided in Section 2.4 hereof.

7.2. Any money paid to the Bank pursuant to Section 7.1 hereof shall, so long as no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, be applied, in whole or in part, as the Railroad shall direct in a written instrument filed with the Bank, to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of an item or items of equipment of new standard gauge railroad equipment (other than work or passenger equipment) to replace such Item or Items of Equipment having suffered a Casualty Occurrence and which new item or items of equipment shall be of a quality and have a value and utility at least equal to such Item or Items of Equipment having suffered a Casualty Occurrence, as the Railroad shall direct in such written instrument. In case any such money shall be applied to prepay indebtedness, it shall be so applied, on the first installment date for the payment of the Purchase Price of the Equipment next following receipt by the Bank of such written direction, to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the installments of the Purchase Price of the Equipment thereafter falling due, whether or not such amount shall be sufficient to prepay the entire amount of the Purchase Price. In case of replacement the amount to be paid by the Bank in respect of any replacing item shall not exceed the lesser of the cost of such item or the amount which such item would have cost if acquired on the earliest date when any of such money was paid to the Bank, and the Railroad shall pay any additional cost of such item. The amount which any such replacing item would have cost if acquired on the earliest date when any of such money was paid to the Bank shall be conclusively determined by the certificate of a Vice-President or the Comptroller or other Chief Accounting Officer of the Railroad to be filed as hereinafter provided.

7.3. The payment to be made to the Bank in respect of each Item of Equipment having suffered a Casualty Occurrence (the "Casualty Payment") shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Payment shall be determined.

7.4. So long as no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, any money paid to the Bank pursuant to this Section 7 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) such direct obligations of the

United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest or (ii) open market commercial paper given the highest rating by a national credit agency or (iii) in certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least \$50,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called "Investments"), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest or earned discount received by the Bank on any Investments shall be held by the Bank and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Bank thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Bank for application pursuant to this Section 7, and any excess shall be paid to the Railroad. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Bank an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Bank in connection with the purchase and sale of Investments.

7.5. The Railroad will cause any replacing Item to be plated or marked as provided in Section 6.1 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Bank subject to the provisions hereof, and the Railroad shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and the deposit with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and publication of notice of such deposit in The Canada Gazette in accordance with said Section 86 of an appropriate supplemental agreement describing such replacements) and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Bank to such replacements. All such replacements shall be warranted in like manner as the Items replaced, and such warranties shall then accrue to the benefit of the Bank and its successors and assigns.

7.6. Whenever the Railroad shall file with the Bank, pursuant to the foregoing provisions of this Section 7, a written direction to apply money to or toward the cost of a replacing Item or

Items of new standard gauge railroad equipment, the Railroad shall file therewith in such number of counterparts as may reasonably be requested:

(a) a certificate of a Vice-President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacing Item or Items is new standard gauge railroad equipment (other than work or passenger equipment) and has been plated or marked as required by the provisions of this Section 7 and certifying the cost of such replacing Item or Items, the amount which such replacing Item or Items would have cost if acquired on the earliest date when any such money was paid to the Bank and that the cost thereof does not exceed the fair value of such Item or Items and that such replacing Item or Items have a quality and value and utility at least equal to the Item or Items replaced; and

(b) an opinion of counsel for the Railroad that title to such replacing Item is vested in the Bank free and clear of all liens and encumbrances, and that such Item has come under and become subject to this Agreement.

7.7. In the event that any moneys paid to, or held by, the Bank pursuant to this Section 7 are applied to the prepayment of indebtedness in respect of the Purchase Price, the Railroad will pay to the Bank on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

If an Event of Default shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Bank pursuant to this Section 7 and all money thereafter paid to the Bank pursuant to this Section 7 until such Event of Default shall no longer be continuing shall be applied by the Bank as if such money were money received upon the sale of Equipment pursuant to Section 17 hereof.

7.8. In order to facilitate the sale, or other disposition of any Equipment suffering a Casualty Occurrence, the Bank shall upon request of the Railroad, after deposit by the Railroad of a sum equal to the Casualty Payment of such Equipment, execute and deliver to the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Conditional Sale Agreement, in such form as may be reasonably requested by the Railroad.

7.9. In the event that prior to the expiration of the term of this Agreement, the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of

eminent domain or otherwise for an indefinite period or for a stated period ending on or before said expiration date, the Railroad's duty to pay the indebtedness in respect of the purchase price thereof shall continue for the duration of such requisitioning or taking. So long as no Event of Default shall have occurred and be continuing hereunder, the Railroad shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

7.10. The Railroad will, at its own expense, so long as any portion of the indebtedness in respect of the Purchase Price of the Equipment or any interest thereon shall remain unpaid, cause to be carried and maintained property insurance in respect of the Items of Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Railroad in respect of similar equipment owned by it and the benefits thereof shall be payable to the Bank and the Railroad as their interests may appear. Any policies of insurance carried in accordance with this Section shall (i) require 30 days' prior notice to the Bank of cancellation or material change in coverage, and (ii) name the Bank as an additional insured as its interests may appear, and in the event that such policies contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Bank therein, the insurance shall not be invalidated by any action or inaction of the Railroad or any other person (other than the Bank) and shall insure the Bank regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Railroad or by any other person (other than the Bank). Any insurance proceeds (less expenses of collection) or condemnation payments received by the Bank in respect of Items of Equipment suffering a Casualty Occurrence shall be deducted from the Casualty Payment payable by the Railroad in respect of the Casualty Occurrence pursuant to this Section 7. If the Bank shall receive any insurance proceeds or condemnation payments in respect of any Item of Equipment after the Railroad shall have paid a Casualty Payment with respect to such Item of Equipment pursuant to this Section 7 without deduction for such insurance proceeds or condemnation payments, the Bank shall pay all such proceeds or condemnation payments to the Railroad. All insurance proceeds received by the Bank in respect of any Item of Equipment not suffering a Casualty Occurrence shall be paid to the Railroad upon proof satisfactory to the Bank that any damage to such Item has been fully repaired.

SECTION 8. TAXES.

All payments to be made by the Railroad hereunder will be free of expense to the Bank for collection or other charges and will be free of expense to the Bank in respect of the amount of any

local, state or federal taxes, license and registration fees, assessments, charges, fines, penalties, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing (other than net income, excess profits and similar taxes) hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the purchase price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Bank solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Bank or result in a lien upon any Item of Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Bank, adversely affect the property or rights of the Bank hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Bank directly and paid by the Bank, the Railroad shall reimburse the Bank on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Bank for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Bank shall have submitted notice in writing to the Railroad at least five business days in advance of payment thereof.

SECTION 9. REPORTS AND INSPECTIONS.

9.1. On or before April 1 in each year, commencing with the year 1978, the Railroad will furnish to the Bank an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Items of Equipment then subject to this Agreement, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Bank may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 6.1 hereof shall have been preserved or replaced.

9.2. The Bank shall have the right, at its sole cost and expense by its authorized representative, to inspect the Equipment and the Railroad's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Bank the existence and proper maintenance thereof during the continuance of this Agreement.

SECTION 10. POSSESSION, USE AND MAINTENANCE.

10.1. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by or controlling the Railroad, or over which it has trackage rights, and the Equipment may be used also upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the Equipment by the Bank to the Railroad; provided, however, that the Railroad shall not assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the continental United States.

10.2. The Railroad shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Railroad shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Railroad shall not modify any Item of Equipment without the written authority and approval of the Bank which shall not be unreasonably withheld, provided that no such approval is necessary if and to the extent such modification is required by Section 12 hereof. Any parts installed or replacements made by the Railroad upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Bank, without cost or expense to the Bank.

SECTION 11. PROHIBITION AGAINST LIENS.

11.1. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Bank, and any liens, encumbrances or charges which might be levied against or imposed upon any Item of Equipment as a result of the failure of the Railroad to perform or observe any of its covenants or agreements under this Agreement, but

shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested by the Railroad in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Bank, adversely affect the property or rights of the Bank hereunder.

11.2. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called "permitted liens").

SECTION 12. RULES, LAWS AND REGULATIONS.

During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Bank, adversely affect the property or rights of the Bank hereunder.

SECTION 13. INDEMNITIES AND WARRANTIES OF RAILROAD.

13.1. The Railroad agrees to indemnify, protect and hold harmless the Bank against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including claims for strict liability in tort and counsel fees, arising out of retention by the Bank of security title to the Equipment, or out of the use and operation thereof during the period when security title thereto remains in the Bank. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment and the conveyance of the Equipment, as provided in Section 5.2 hereof, or the termination of this Agreement in any manner whatsoever.

13.2. The Railroad will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Item or of all the Equipment.

13.3. The Railroad guarantees that the Items of Equipment will be reconstructed in accordance with the requirements, specifications and standards set forth in Section 1 hereof and warrants the Equipment will be free from defects in material and workmanship under normal use and service.

13.4. The Railroad covenants and agrees that it will warrant to the Bank that, at the time of delivery of each Item of Equipment pursuant to Section 2 of this Agreement, it had legal title to such Item and good and lawful right to sell such Item and the title to such Item was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under this Agreement; and the Railroad further covenants and agrees that it will defend title to such Item against the demands of all persons whomsoever based on claims originating prior to the delivery of such Item by the Railroad to the Bank, all subject, however, to the provisions of this Agreement and the rights of the Railroad hereunder.

SECTION 14. PATENT INDEMNITIES.

The Railroad agrees to indemnify, protect and hold harmless the Bank from and against any and all liability, claims, demands, costs, charges, and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Bank or its assigns because of the use in or about the construction, reconstruction or operation of any Item of Equipment of any design, article or material which infringes or is claimed to infringe on any patent or other right.

SECTION 15. ASSIGNMENTS.

15.1. Except as otherwise provided in Section 10.1 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any Item of Equipment without first obtaining the written consent of the Bank. An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Railroad, and which by execution of an appropriate

instrument satisfactory to the Bank, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

15.2. All or any of the rights, benefits and advantages of the Bank under this Agreement, including the right to receive the payments herein provided to be made by the Railroad may be assigned by the Bank and reassigned by an assignee at any time or from time to time.

15.3. Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Bank's right, security title and interest in and to the Equipment subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad, of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

15.4. In the event of any such assignment or successive assignments by the Bank of security title to the Equipment and of the Bank's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the names and word or words to be marked on each side of each Item of Equipment so as to indicate the security title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

15.5. In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with settlement for the Group subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to the Group, all documents reasonably required by the terms of such assignment to be delivered by the Railroad to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested.

SECTION 16. DEFAULTS.

16.1. In the event that any one or more of the following events of default ("Events of Default") shall occur and be continuing, to-wit:

(a) The Railroad shall fail to pay in full any sum payable by the Railroad when payment thereof shall be due under Section 4.2, 4.6 or 7.1 hereof and such default shall continue for fifteen days; or

(b) The Railroad shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Bank for such compliance for more than 30 days after written notice from the Bank specifying the default and demanding the same to be remedied; or

(c) Any representation or warranty made by the Railroad herein or in any statement or certificate furnished to the Bank or any Investor proves untrue in any material respect as of the date of issuance or making thereof; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and (unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment or 60 days after such petition shall have been filed, whichever shall be earlier, or

(e) Any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only

so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for the property of the Railroad in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Item of the Equipment;

then at any time after the occurrence and during the continuance of such an Event of Default the Bank may, and upon the written direction of Investors holding interests in excess of 66-2/3% of the Conditional Sale Indebtedness then outstanding in accordance with paragraph 10 of Section 5(b) of the Finance Agreement and the furnishing of indemnification to the Bank as therein provided shall, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Bank, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 9-1/4% per annum, to the extent legally enforceable, and the Bank shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. All sums collected in payment of such indebtedness and interest thereon, whether pursuant to the remedies hereinafter provided or otherwise, shall be applied first to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment and second to the payment, ratably in accordance with the unpaid balance of each installment, of the installments of indebtedness in respect of the Purchase Price of the Equipment then remaining unpaid.

16.2. The Bank may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 17. REMEDIES.

17.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Bank may, and upon the written direction of Investors holding interests in excess of 66-2/3% of the Conditional Sale Indebtedness then outstanding in accordance with paragraph 10 of Section 5(b) of the Finance Agreement and the furnishing of indemnification to the Bank as therein provided shall, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Bank, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 17 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the premises of the Railroad or where the Equipment may be located without judicial process if this can be done without breach of the peace, and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

17.2. In case the Bank shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Bank, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Bank and shall there deliver the Equipment or cause it to be delivered to the Bank; and, at the option of the Bank, the Bank may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Bank shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Bank reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Bank shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Bank and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

17.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have

been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Section 16.2 hereof), the Bank (after retaking possession of the Equipment as hereinbefore in this Section 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire unpaid indebtedness in respect of the Purchase Price thereof, together with interest thereon and all other payments due hereunder and make such disposition thereof as the Bank shall deem fit. Written notice of the Bank's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Section 21 hereof, and to any other persons to whom the law may require notice, within 30 days after the indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable by the Bank as above provided. In the event that the Bank should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all of the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Bank as compensation for the use of the Equipment; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Bank the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this Section 17.3 object in writing to the Bank within 30 days from the receipt of notice of the Bank's election to retain the Equipment, then the Bank may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold the Equipment pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Bank shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 17.

17.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Bank may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Bank may determine, provided that the Railroad shall be given written notice of such sale not less

than 30 days prior thereto, by mail addressed as provided herein. The Bank and the Railroad may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale. If such sale shall be a private sale, it shall be subject to the rights of the Railroad to purchase or provide a purchaser, within 30 days after notice of the proposed sale price, at the same price offered in writing by the intending purchaser or a better price. In the event that the Bank shall be the purchaser of the Equipment, or any Item thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the Purchase Price therefor the Bank shall be entitled to have credited on account thereof all sums due to the Bank from the Railroad hereunder.

17.5. Each and every power and remedy hereby specifically given to the Bank shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Bank. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Bank in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

17.6. If, after applying as aforesaid all sums of money realized by the Bank, there shall remain any amount due to it under the provisions of this Agreement, the Bank may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Bank, there shall remain a surplus in the possession of the Bank, such surplus shall be paid to the Railroad.

17.7. The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Bank in enforcing its remedies under the terms of this Agreement. In the event that the Bank shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Bank may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

17.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 18. APPLICABLE STATE LAWS.

18.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

18.2. Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Bank's rights hereunder and any and all rights of redemption.

SECTION 19. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Bank shall impair or affect the Bank's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Bank's rights or the obligations of the Railroad hereunder. The Bank's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Bank's rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 20. RECORDING.

The Railroad will cause this Agreement, any assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and re-filed, re-recorded or re-deposited, if necessary, with the Interstate Commerce Commission and the Registrar General of Canada (with notice of such deposit to be published in The Canada Gazette in accordance with Section 86 of the Railway Act of Canada), and otherwise as may be required by law or reasonably requested by the Bank for the purpose of proper protection, to the satisfaction of counsel for the Bank of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Bank certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Bank.

SECTION 21. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed by certified mail to it at the following specified addresses:

(a) to the Railroad: Burlington Northern Inc.,
Burlington Northern Building, 176 East Fifth Street,
St. Paul, Minnesota 55101, Attention: Assistant Vice
President, Financial Planning,

(b) to the Bank: Lake View Trust and
Savings Bank, 3201 N. Ashland Avenue, Chicago,
Illinois 60657, Attention: Trust Depart-
ment,

(c) to any assignee of the Bank, or of the
Railroad, at such address as may have been furnished
in writing to the Railroad or the Bank, as the case
may be, by such assignee,

or at such other address as may have been furnished in writing by
such party to the other parties to this Agreement.

SECTION 22. HEADINGS.

All section headings are inserted for convenience only
and shall not affect any construction or interpretation of this
Agreement.

SECTION 23. EFFECT AND MODIFICATION OF AGREEMENTS.

This Agreement and the Schedules relating hereto, exclu-
sively and completely state the rights and agreements of the Bank
and the Railroad with respect to the Equipment and supersede all
other agreements, oral or written, with respect to the Equipment.
No variation of this Agreement and no waiver of any of its pro-
visions or conditions shall be valid unless in writing and duly
executed on behalf of the Bank and the Railroad.

SECTION 24. LAW GOVERNING.

The terms of this Agreement and all rights and obliga-
tions hereunder shall be governed by the laws of the State of
Minnesota; provided, however, that the parties shall be entitled
to all rights conferred by Section 20c of the Interstate Commerce
Act and such additional rights arising out of the filing, record-
ing or depositing hereof and of any assignment hereof as shall
be conferred by the laws of the several jurisdictions in which
this Agreement or any assignment hereof shall be filed, recorded
or deposited.

SECTION 25. CONSOLIDATION OR MERGER.

In case of any consolidation or merger to which the Railroad or the Bank shall be a party, or in case of any sale of all or substantially all the assets of the Railroad or the Bank, the corporation resulting from such consolidation or merger (if other than the Railroad or the Bank) or the corporation which shall acquire such assets, shall expressly assume all obligations hereunder, not then performed, of the Railroad or the Bank, as the case may be, and shall become entitled to all rights hereunder of the Railroad or the Bank, as the case may be.

SECTION 26. EXECUTION.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

LAKE VIEW TRUST AND SAVINGS BANK
As Agent

By Emil F. Bender
Its Vice President

(Corporate Seal)

Attest:

TRUST OFFICER

Assistant Secretary

BURLINGTON NORTHERN INC.

By Frank H. Coyle
Its Executive Vice-President -
Finance and Administration

(Corporate Seal)

Attest:

Assistant Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 27th day of April, 1977, before me personally appeared EMIL F. BENDER, to me personally known, who, being by me duly sworn, says that he is a Vice President of LAKE VIEW TRUST AND SAVINGS BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carl J. Pratt
Notary Public

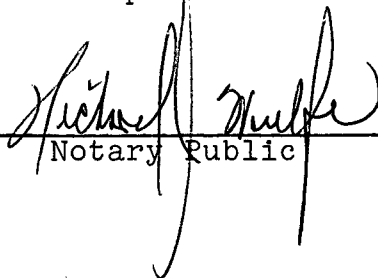
(Seal)

My Commission Expires:

5/22/78

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

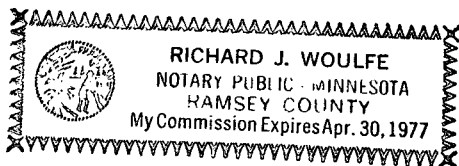
On this 25th day of April, 1977, before me personally appeared Frank H. Coyne, to me personally known, who being by me duly sworn, says that he is the Executive Vice President-Finance and Administration of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

(Seal)

My Commission expires:



SCHEDULE A

to Reconstruction and Conditional Sale Agreement

DESCRIPTION OF EQUIPMENT 60 50-foot double door box-cars bearing identifying numbers BN248200 to BN248259, both inclusive

RECONSTRUCTION SPECIFICATIONS CRP-1-1977

BASE PRICE Hulk Price per Item: \$3,967
(\$238,020 for 60 Items)
Reconstruction Cost per Item: \$20,620
(\$1,237,200 for 60 Items)
Total per Item: \$24,587
(\$1,475,220 for 60 Items)

MAXIMUM PRICE \$25,616.35 per Item
(\$1,548,981 for 60 Items)

PLACE OF DELIVERY St. Cloud, Minnesota

ESTIMATED DELIVERY DATES May, 1977

OUTSIDE DELIVERY DATE September 1, 1977

RAILROAD'S PLANT St. Cloud, Minnesota